

S/N 10/772,677
AMENDMENT

ATTY DOCKET NO. 14475

REMARKS

This is in response to the Office action mailed December 2, 2004. In the above amendment, claim 2, and non-elected claims 20 and 21 are canceled. The subject matter of claim 2 and the first clause of claim 3 are added to claim 1. Dependencies of the other claims are amended as necessary in view of the cancellation of claim 2. The term "crocodile-like" is removed from the claims to avoid the rejection under 35 USC 112

Importantly, and as clearly set forth in original claim 3, the Applicants' anchor includes a first leg and a second leg demarcated from one another by a pair of slits which have a zig-zag shape defining interfacing teeth on said legs.

Claims 11 through 19 depend from claim 1 and add further limitations concerning various dimensions of the parts of the anchor claimed in claim 1.

Claim Rejections – 35 USC 103

Claims 1-19 stand rejected under 35 USC 102 (a) as being anticipated by the Remmers US patent 6,494,652 in view of Hempfling US patent 6,382,892. Reconsideration is requested in view of the above amendments and the remarks which follow.

Upon reconsideration, and as indicated hereinabove, claim 1 as amended and claim 10 call for an anchor having a first leg and a second leg demarcated from one another by a pair of slits which have a zig-zag shape defining interfacing teeth on said legs.

This feature is neither taught nor suggested by the above-mentioned Remmers or Hempfling patents. The Hempfling patent was cited only for the thread e.g., in claim 1, and the tapered bore portion, e.g., in claim 9. The Remmers structure appears to rely upon the fastener forcing apart the threaded sides of the anchor by pressing against the angled surface 32 (see e.g., Fig. 5). However, Remmers does not teach or suggest a first leg and a second leg demarcated from one another by a pair of slits which have a zig-zag shape defining interfacing teeth on said legs.

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These teeth are disclosed by Applicant as follows:

[0032] "Continuing with FIG. 1, teeth 90 interlock together and interface when anchor 10 is in the drilling mode. Interlocked teeth 90 help stabilize anchor body 12 and prevent it from twisting or buckling as anchor 10 is driven into drywall 1, while still allowing legs 24, 26 to be pivoted apart and wedged into drywall 1. It is also believed that teeth 90 increase pullout by engaging with drywall 1 at outer surface 20 when anchor 10 is in the anchoring mode.

[0033] "Teeth 90 also aid in the pullout strength of anchor 10 because teeth 90 can fit between adjacent threads 9 of fastener 2, as shown with tooth 90a in FIG. 7, so that teeth 90 engage fastener 2 and wedge it into place. In this way, teeth 90 act as a thread lock on both sides of fastener 2 which causes fastener 2 to be more tightly engaged with anchor 10, helping to block fastener 2 from pulling out of engagement with anchor 10. Fastener threads 9 increase pullout strength by engaging and pushing teeth 90 to further pivot legs 24, 26 outwardly to wedge into drywall 1."

Remmers does not teach or suggest any such interlocking teeth. The Examiner has referred to the curved sections of the channels 28, 58 of Remmers. However, these are not disclosed as teeth. Rather, Remmers does not appear to give any reason for the curvature of the channel separating the two legs of the anchor. It would appear that this patent is mainly concerned with defining the ramp faces 30 and 32, so that the latter extends into the path of the fastener. In Figure 5, it is clear that in order to provide the channel 28, and maintain the ramp 32, it is necessary to provide the curvature shown between these features. This curvature has no practical function, other than to connect the ramp 32 with the channel 28. Similarly, in the embodiment of Fig. 7, it is clear that the channel must curve to one side as indicated at 58 in order to allow formation of the drill point 58, 60 on the leg 56b of the anchor.

The remaining claims depend directly or indirectly from claim 1 or claim 10 and are patentable for generally the same reasons given above in support of claims 1 and 10.

Claims 11 through 13 are patentable with claim 1 for the reasons given above and additionally, because of the range/value of the obtuse angle of the shoulder, which is

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called for in each of these claims. There is no apparent basis in the applied patents or any of the art of record to provide particular angles or ranges of angles of the shoulder.

Claims 14-19 call for various relationships between the distance from the first end of the slits to the flanged rear end, to the length of the fastener, to the length of the anchor, or to the thickness of the material. The Examiner has cited no references in support of the rejection of these claims. Rather, the Examiner has stated, "...the size of the anchor is related to the thickness of the wall material is considered an intended use... Remmers or Hempfling patents and the combination of Remmers and Hempfling patents are capable of such an intended use". Applicant respectfully disagrees that the specific structural limitations constitute "a statement of intended use". Moreover, it is not clear how this statement relates to the criteria for obvious under 35 USC 103. The examiner has cited no authority for this statement, which does not appear to meet the criteria set forth in MPEP 706.02(j):

706.02(j) Contents of a 35 U.S.C. 103

Rejection

35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. After indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
- (B) the difference or differences in the claim over the applied reference(s),
- (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
- (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

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The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See MPEP § 2144 - § 2144.09 for examples of reasoning supporting obviousness rejections.

Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively included in the statement of the rejection. See *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970). It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. Furthermore, if an initially rejected application issues as a patent, the rationale behind an earlier rejection may be important in interpreting the scope of the patent claims. Since issued patents are presumed valid (35 U.S.C. 282) and constitute a property right (35 U.S.C. 261), the written record must be clear as to the basis for the grant. Since patent examiners cannot normally be compelled to testify in legal proceedings regarding their mental processes (see MPEP § 1701.01), it is important that the written record clearly explain the rationale for decisions made during prosecution of the application. See MPEP § 2141 - § 2144.09 generally for guidance on patentability determinations under 35 U.S.C. 103, including a discussion of the requirements of *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966). See MPEP § 2145 for consideration of applicant's rebuttal arguments. See MPEP § 706.02(I) - § 706.02(I)(3) for a discussion of prior art disqualified under 35 U.S.C. 103(c).

In view of the foregoing amendments and remarks, the claims as now presented are believed patentable over the art of record, and therefore favorable reconsideration is requested. The Examiner is invited to telephone Applicant's undersigned representative, if anything further which appears to be necessary to allowance of the application could be addressed by a way of telephone interview.

Respectfully submitted,

Dated this 22nd day of February, 2005.


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